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January 11, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

**EX PARTE
PRESENTATION**

Re: In the Matter of the Petition of the
Inmate Calling Services Providers Task
Force for Declaratory Ruling, RM 8181

Dear Mr. Caton:

Pursuant to the Commission's rules on ex parte presentations, 47 CFR § 1.1206(a), we hereby submit information in the above-referenced docket on behalf of the Inmate Calling Services Providers Task Force ("Task Force") American Public Communications Council ("APCC").

The purpose of this letter is to respond to several statements and arguments in the ex parte presentation of BellSouth and Pacific Bell, dated November 30, 1995. See letter to William F. Caton, Acting Secretary, FCC, from Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis, dated November 30, 1995, and attachments entitled "BellSouth and Pacific Bell Exparte, Payphone Issues in an Evolving Competitive Environment," November 29, 1995 ("Bell Issues Ex Parte") and "BellSouth and Pacific Bell FCC Payphone Exparte Current FCC Proceedings," November 28, 1995 ("Bell Proceedings Ex Parte").

In these presentations, BellSouth and Pacific Bell request the Commission to defer ruling on the pending petition for a ruling that inmate telephones provided by Bell companies to correctional facilities are customer premises equipment ("CPE"). The Bell Companies ask the Commission to defer ruling on this issue until the Commission (1) addresses the regulatory status of Bell public payphones; (2) grants per-call compensation for RBOC

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payphones in lieu of the current cost recovery mechanism through the carrier common line charge; and (3) grants RBOCs the same right as independent public payphone providers to select the interLATA carrier with the location provider. Bell Issues ExParte at 5; Bell Proceedings ExParte at 2.

The Task Force opposes any further delay in issuing a ruling in this proceeding. While the Task Force encourages the Commission to act expeditiously on all pending matters affecting both inmate telephones and public payphones, for the reasons stated below, the Bell companies' presentation presents no valid reason for deferring resolution of the regulatory status of inmate telephones.

According to the Bell presentations, granting the inmate petition without first addressing other issues would place RBOC inmate payphone service providers at an unfair competitive disadvantage. The Bell Companies claim that their inmate service costs "will increase without sufficient revenue offsets." Bell Proceedings Ex Parte at 2. They also argue that "no other cost recovery mechanism exists for RBOCs to offset expenses currently recovered through switched access carrier common line." Id.

In claiming that they would be at an unfair competitive disadvantage if they could not continue recovering the expenses of inmate telephone systems from carrier common line revenues, the Bell companies are admitting that they currently use those revenues to subsidize their inmate telephone services. Such subsidies contradict the fundamental principles underlying this Commission's competitive policies. There is no legitimate justification for allowing the Bell companies to continue providing a subsidy to their inmate telephone service operations,¹ particularly since the Bell companies elsewhere

¹ Such subsidizing behavior is not justified by good-faith reliance on prior Commission rulings. No prior Commission decision justifies the Bell companies in using regulated revenues to subsidize inmate CPE. In the past, the Commission ruled that carrier-provided public pay telephones are not subject to deregulation and are exempt from the Commission's Computer II rules that deregulate virtually all other categories of customer premises equipment ("CPE"). Tonka Tools, Inc., 58 RR2d 903 (1985). However, the Commission has never ruled that telephones used only by inmates in correctional facilities are exempt from the Computer II rules for CPE.

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represent their inmate operations as "lucrative" telephone systems that do not require any subsidy in order to be maintained. See, e.g., Attachment 1 at 4.

Furthermore, elimination of subsidies would not impose any unfair competitive disadvantage on the Bell companies. Rather it would eliminate an unwarranted competitive advantage currently enjoyed by the Bell Companies, one that distorts competition and burdens ratepayers for regulated services.

BellSouth and Pacific Bell also claim that they would be disadvantaged because, as a result of AT&T consent decree restrictions, they are unable to "participate in the lucrative [interLATA] opportunities that IPPs enjoy today." Bell Proceedings Ex Parte at 2. They claim that the Bell companies' inmate telephone operations have only one interstate revenue source, interstate access charges, while IPP providers are able to obtain revenue from 1+ interstate usage, 1+ interstate operator, 0+/0- interstate usage, 0+/0- interstate operator, 0+/0- interstate surcharge, 0+/0- international usage, 0+/0- international usage, 0+/0- international operator, and dial around compensation. Bell Proceedings Ex Parte at 5.

Even if these claims were accurate, it would be inappropriate for the Commission to allow continuing distortion of competition merely because one competitor is subject to restrictions outside the Commission's control. In fact, however, the Bell companies' claims regarding "revenue sources" available to independent providers but not Bell companies are not accurate in several important respects, especially as applied to inmate telephone service.

First, revenue from "1+ Interstate Usage," "1+ Interstate Operator," and "Dial Around Compensation" is not generally available to independent providers serving the correctional market. In general, inmates are not allowed to dial direct or deposit coins -- they must call "collect" -- and are not allowed to engage in "dial around" calling. Therefore, any alleged differences in the availability of "1+" or "Dial Around Compensation" revenues simply do not apply to the correctional market.

Second, with respect to "0-/0+" (i.e., collect) revenue, BellSouth itself points out, in the letter to a jail

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administrator accompanying this ex parte presentation, that the vast majority of calls from jails are intraLATA calls. Attachment 1 at 3. Therefore, even if the Bell companies did suffer from a disadvantage vis-a-vis interLATA collect revenue, that disadvantage would not be decisive in the correctional marketplace.

Third, even interLATA collect revenue is indirectly available to Bell companies. While the AT&T consent decree may prevent Bell companies from obtaining commission revenue from IXCs on interLATA "0+/0-" -- i.e., collect -- calls originating from correctional facilities, the correctional facility itself can and does negotiate to receive such revenue from IXCs, either directly or through agents, including the Bells -- who thus offer a "one stop" service to correctional facilities.² These commission payments allow the Bell companies to reduce the commissions they otherwise would pay to correctional facilities in order to meet or beat independent competition.³

BellSouth and Pacific Bell provide no reason to believe that IXCs pay any lower commissions to the correctional facilities that use Bell company-provided inmate telephone systems than they pay to independent inmate telephone system providers. Indeed, since IXCs presumably value calls from correctional facilities served by Bell companies as much as they value calls from correctional facilities served by independents, it is illogical to assume that the commissions that IXCs pay to independent inmate service providers are any greater than those that IXCs pay to correctional facilities served by Bell companies.⁴ In sum, the Bell companies fail to demonstrate that

² Attachment 2 is an amendment to Ameritech's equal access plan in which it informed the Department of Justice that it would provide such one-stop shopping with respect to its public payphones. Presumably Ameritech and the other Bell companies engage in similar practices with respect to inmate telephones.

³ Attachment 1 is a letter to an inmate facility from Southern Bell explaining this point to an inmate facility. See Attachment 1 at 4. Southern Bell states: "you may elect to piggyback on the N.C. State contract which is now paying 24% commission on interlata calls."

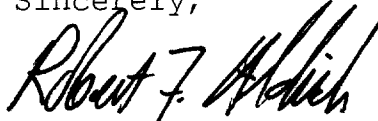
⁴ To the extent that traffic volumes are a relevant factor,
(Footnote continued)

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they are economically harmed or subject to any significant competitive disadvantage by not being able to obtain commission payments directly from IXCs.

We are not arguing here for a continuation of existing restrictions on the Bell companies' ability to select, contract with, and receive commissions from, IXCs that carry correctional facilities' interLATA calls. However, it is not currently within the Commission's authority to remove restrictions imposed by the AT&T consent decree. The important point is, as Southern Bell itself explains in Attachment 1 to this ex parte, that those restrictions do not in any event unduly disadvantage the Bell companies; the Commission's inability to immediately remove the restrictions in no way justifies any further delay in ruling that the Bell companies' provision of inmate CPE as part of a regulated service violates the longstanding Computer II rules.

Sincerely,



Albert H. Kramer
Robert F. Aldrich

RFA/jh

Enclosure

cc: Kathleen Levitz
Richard Metzger
Mary Beth Richards
John Morabito
Alan Thomas

(Footnote continued)

many of the businesses and government entities that have Bell payphones on their premises are themselves very large entities -- much larger than the largest IPP provider. With respect to smaller businesses that rent space on their premises for payphones, the current practice in many areas is for "independent" agents to aggregate numerous Bell payphone locations for purposes of negotiating a package commission agreement with an IXC.

ATTACHMENT 1



Southern Bell

Southern Bell Public Communications
400 Enterprise Drive
P.O. Box 30188
Charlotte, North Carolina 28230

January 11, 1995

Ms. Lori Lauer
Mecklenburg County Sheriff's Department
700 E. 4th Street
Charlotte, North Carolina 28202

Dear Lori:

In response to your request for additional information pertaining to Southern Bell's Inmate Telephone System, the following information is provided:

QUESTION # 1- Are there any types of calls you cannot pay commission on? If so, what types? How does this effect the overall commission rate?

RESPONSE: Southern Bell does not pay commission on calls to 800#s, 900#s, 976#s, 950#s, 411 (local information), 555-1212 (long distance information), 611 (Southern Bell repair), 780#s (Southern Bell toll free #s) and 911 calls.

QUESTION # 2- Can Southern Bell provide free calls at the intake center or jail from defendants to attorneys, public defenders or bondsman?

RESPONSE: Yes, Southern Bell can provide so-called "free calling" for the inmate, however since Southern Bell is prohibited by tariff from giving free service to anyone or any organization. Our procedure in these cases is to subtract the actual cost of these calls from the commission check each month. Even if another vendor says that they can provide free calls, they also take the cost of providing this "free" service into account as part of their overall expenses, and you as the telephone location provider will end up actually paying for the "free"

calling for the inmates. This option has always been available to inmate facilities served by Southern Bell in North Carolina, however none have elected to implement this option.

QUESTION #3- Is it necessary to connect to a live operator if the end user has a rotary dial phone?

RESPONSE: No; when the called party has a rotary dial phone, our automated system will give a voice prompt stating that if they have a

rotary dial phone they can respond with a verbal "YES" to accept the collect call or just hang up to reject the call.

QUESTION #4- Can Southern Bell flag or block employee or Sheriff Department numbers and notify Sheriff's Dept. if calls are attempted to these numbers? Are you able to provide an alert feature to immediately advise Sheriff's Dept.?

RESPONSE: Southern Bell can block calls from being made to Sheriff's Dept. employees telephone numbers. You can, on a daily basis or on an as needed basis, search the system data base to determine if attempts were made to call those numbers. Currently there is not an alert feature for immediate notification, however if this is a feature you want, we will present it to Science Dynamics for incorporation into the next system software release. Science Dynamics is very responsive to our requests for development of new system features.

QUESTION #5- Do you have a policy to contact end users whose acceptance of collect calls exceeds a set amount to allow them the option of blocking future calls?

RESPONSE: Southern Bell does not have a policy to contact the end users whose acceptance of collect calls exceed a set amount to allow them the option of blocking future calls. Each month the called party will receive a bill for the collect calls. From this notification of the cost they would have to determine the number of calls which they can accept each month. If in the future Mecklenburg County Jail elects to incorporate a debit or commissary system, we can control the dollar volume of total calling made by an inmate.

QUESTION #6- Do you provide 24 hour service-being flexible to solve any unique situation we may need assistance with?

RESPONSE: Yes. The normal repair procedure is for the customer to dial Southern Bell's repair number 611. The Repair Center has a complete list of numbers for 24 Hour call outs. Additionally, your staff will have the home numbers of your account team members for any after hours needs.

QUESTION #7- Can all satellite jails be networked into one computer to limit access to only trained, approved personell at that location?

RESPONSE: Yes we can. Each person who has a need to access the system will have a unique password for access. This also provides a record of who did what in the system.

QUESTION #8- Does Southern Bell carry only intralata calls? Do we have to choose another carrier for interlata calls?

RESPONSE: Currently Southern Bell only carries intralata calls and local calls. Effective July 1, 1994 interexchange carriers are allowed to carry both intra and interlata traffic. We would expect that we also will be allowed to carry both sometime in the near future. Keep in mind that 85 to 90% of the calls made from the jails are expected to be either local calls or intralata calls. Also, you may elect to piggyback on the N.C. State contract which is now paying 24% commission on interlata calls.

QUESTION #9- Can you provide a monthly report detailing the most active numbers being called? Can you provide a monthly report listing calls placed to or from each law enforcement agency- if same number is called from more than one jurisdiction? Can you provide a report of all calls for any time period needed for emergency situations?

RESPONSE: Yes, we can provide a report detailing the most active numbers being called. We cannot provide a monthly report listing calls placed to or from each law enforcement agency- if the call is placed from more than one jurisdiction. This can only be accomplished if you share data base information with the other agencies or jurisdictions involved. Yes, we can provide a report of all calls for any time period as needed for emergency situations.

QUESTION #10- How often, and what is the procedure you would advise us of new features/techniques for upgrading our system? Will you upgrade on request?

RESPONSE: As your Account manager it is my responsibility to advise you all new products and services available. If a new feature or software package is available and wanted by you it will be provided to you at no cost.

QUESTION #11- Will we have a specific company contact person?

RESPONSE: Yes. As your Account Manager I am your primary contact person.

QUESTION #12- What jails besides Charleston have PC based phone systems. How long have they been in effect? Is your PC based system one that the Sheriff Dept. can control and generate own reports including the type mentioned in previous questions?

RESPONSE: Tab #8 of the proposal lists all of the North Carolina and South Carolina systems, and there are more than 260 other inmate

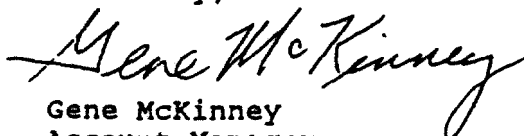
systems installed in the other BellSouth states. 58 of those 260 systems are the Science Dynamics CCTD Inmate Telephoine Systems similar to the system we are proposing for Mecklenburg County. The State of South Carolina has signed a contract with Southern Bell to install the CCTD system in all of their prison locations. We are filing a request with the North Carolina Public Utilities Commission on January 18 asking to be allowed to offer the SMDR feature effective on February 22, and we are confident that we will be given approval. With approval you will have the capability to generate your own reports.

QUESTION #13- What do you feel are the greatest advantages of using Southern Bell vs. a competitive private company?

RESPONSE: Southern Bell is a local company which has been in business longer than any of our competitors. Your account will be managed and maintained by very experienced personell who will provide you with a very high level of service. We have the absolute latest in technology and we will upgrade your system as needed at no cost to you. Southern Bell wants to serve all of the public and inmate telephones in the county; by allowing Southern Bell to provide the lucrative inmate telephones in the jails, we are able to offer a higher commission rate to all of the City and County public phones, and we are able to install phones in traditionally low usage areas by averaging in the high usage phones in the jails with those low usage phones. One contract covering all inmate and public phones will allow the best overall service for the entire community.

Please call me if you have any questions, or if I can be of further assistance.

Sincerely;

A handwritten signature in cursive script that reads "Gene McKinney". The signature is written in dark ink and is positioned above the printed name and title.

Gene McKinney
Account Manager

ATTACHMENT 2



AMERICAN INFORMATION TECHNOLOGY

THOMAS P. HESTER
Senior Vice President and
General Counsel

30 South Wacker Drive
Chicago, Illinois 60606
312/750-5200

June 20, 1988

Nancy C. Garrison, Esq.
Assistant Chief
Communications & Finance Section
U. S. Department of Justice
555 Fourth Street, N.W.
Room 8106
Washington, D.C. 20001

Re: Change in Equal Access Procedures for the Routing of
Dial "0" Calls from Some Ameritech Public Telephones
(U.S. v. Western Electric, No. 81-0192).

Dear Ms. Garrison:

In accordance with the requirements of the District Court's order of March 6, 1985, Ameritech hereby notifies the Department of a change in its procedures for the routing of calls dialed without access codes from some Ameritech public telephones.

Since divestiture, dial "0" calls without access codes have been sent to American Telephone and Telegraph Company ("AT&T") exclusively. On January 29, 1988, the Department moved the Court for an order that would, inter alia, require the Bell Operating Companies ("BOCs") to file within sixty days plans that would end this routing. The Court, however, has not yet ruled upon the Department's motion.

Since 1984, the Ameritech companies have advocated before the Department, the Court, and the Federal Communications Commission ("FCC") that routing to AT&T should be replaced by Ameritech's plan to route calls by database inquiry according to the carrier preference of the party who will pay for each credit card, collect, or third-number call. However, the technological capability of doing so is not yet available. Moreover, neither the Court nor the FCC has yet approved the billed party preference plan or, indeed, indicated any inclination to approve any other plan to change the present routing.

While these issues have remained undecided, the owners and proprietors of premises on which public telephones are located have become increasingly aware of alternatives to the public telephones provided by the BOCs and other local exchange carriers ("LECs"). AT&T telephones and other private (i.e., non-BOC or non-LEC) public telephones are being employed to replace BOC

public telephones. Such public telephones frequently employ automatic dialing to direct all calls (whether or not dialed with any carrier's access code) to a carrier selected by the provider of the telephone or the premises owner. Often this carrier is the type of reseller known as an Alternate Operator Service ("AOS") provider. Under these arrangements, the owners and proprietors of public telephone premises are, as a practical matter, controlling the routing of both intraLATA and interLATA calls from their premises by virtue of their ability to select the public telephone provider. These developments have already been described to the Department in NYNEX Corporation's letter dated November 2, 1987, and have since been discussed extensively in the filings before the Court in response to the Department's January 29 motion and in current inquiries by the FCC and state commissions into the practices of AOS carriers.

Another recent development is that Ameritech and other BOCs are making available the data to permit validation of collect, third-number, and BOC credit card calls by all carriers. On May 19, 1988, U S West Service Link announced that it had loaded the data of Ameritech, Southwestern Bell, and U S West and that it was offering validation service on calls to be billed in the twenty-four states served by those three BOC regions. This makes the routing of calls without access codes to non-AT&T carriers a more workable option than before.

In the wake of these developments, Ameritech, like NYNEX, proposes to respond to competitive challenges to its public telephones by routing dial "0" interLATA calls to a carrier selected by the owner of the premises. (This would apply only to interLATA calls dialed without access codes; there would be no change in the routing of 10XXX, 950-KXXX, and other access codes.) In ascertaining the premises owner's choice of interLATA carrier, the Ameritech companies will not be engaged in providing interLATA services or selecting the interLATA carrier. The Ameritech companies will present a bid or proposal relating to the installation and maintenance of the telephone sets and the carriage of local and intraLATA toll traffic and will invite complementary bids from interLATA carriers who are in general agreement with the usual participation assumptions discussed below.

Bids will be invited from interLATA carriers as directed by the premises owners and will be in accordance with the equal access and non-discrimination requirements of the decree. Whenever the premises owner has not indicated any particular interLATA carriers to be solicited, the Ameritech companies will solicit complementary bids from all interLATA carriers who concur in the basis for participation and who might reasonably be expected to have an interest in the BOC public telephones in question. On the other hand, the Ameritech companies do not believe they are required to reveal one carrier's sales leads to the other carriers or to expand the list of bidding carriers beyond the scope desired by the premises owner. Thus, where an

Ameritech company is approached by a particular interLATA carrier with respect to a particular premises, the Ameritech company would submit its intraLATA bid to be complementary only with that carrier's proposal. Similarly, if a premises owner states that he has already selected an interLATA carrier, other carriers would not be notified.

Of course, the Ameritech companies would not seek to hinder any direct contacts between premises owners and interLATA carriers and would not try to prevent carriers from simultaneously bidding with other public telephone providers.

Commissions on interLATA calls paid to the premises owner by the selected interLATA carrier would belong entirely to the premises owner. Upon request, the Ameritech company would receive the commissions from the interLATA carrier and pass them on to the premises owner so that the premises owner may have the convenience of a single check, accounting separately for interLATA and intraLATA commissions.

Ending the exclusive routing of public telephone calls to AT&T will further both the letter and the spirit of the equal access and non-discrimination requirements of the decree. At the same time, those requirements would not be inconsistent with reasonable guidelines stating the normal basis for participation by interLATA carriers in these complementary bidding situations. The guideline proposed by the Ameritech companies is described in the attachment to this letter.

Some of the items in the attachment deal with legal and tariff questions and others relate to the quality of service available from Ameritech public telephones. Each Ameritech company's corporate identity and the Bell trademark appear on Ameritech public telephones, and end users would be misled if services from those telephones were not of the quality and value they have come to associate with those insignia. Furthermore, the end user would be confused and frustrated by any wide differences in using the same telephone for interLATA and intraLATA purposes, damaging the competitive position of the Ameritech public telephone as compared to those of other providers. Thus, for example, the Ameritech companies expect that carriers will not block "1+" coin-sent-paid calls.

The assumptions in the attachment are intended to apply to most situations, but would be subject to adjustment to meet the reasonable needs of premises owners in special circumstances. (Prisons, for example, usually forbid credit card and third-number calling by inmates.) Nevertheless, where a premises owner unreasonably insists upon substandard service, the Ameritech companies reserve the option to remove their public telephones from consideration. In addition, it should be noted that in the FCC's present inquiry into the operations of LOS carriers, many of the carriers have subscribed to a new Code of Responsibilities and have announced other improvements in their services, leading

one to expect that most parties who wish to be associated with BOC public telephones will elect to participate on the basis proposed by Ameritech. Any who do not will of course still be able to compete for the premises owner's selection by partnering with non-BOC providers of public telephones, which is just what they have been doing all along while BOC public telephones were being routed only to AT&T.

These procedures are intended to apply to Ameritech public telephones subject to the immediate pressures of competition. Ameritech still supports its billed-party-preference plan for other Ameritech public telephones, and most likely will not make any alternative or interim proposal before the Court has acted on the Department's January 29 motion. However, Ameritech does propose that any arrangements entered into as described in this letter be honored for whatever time period is agreed upon between the premises owner and the interLATA carrier, even if some other routing plan should be adopted or required in the meantime. For example, if an auction plan such as recently proposed by the GTE telephone companies were imposed by the Court or the FCC, Ameritech would argue that any premises owners who had previously chosen a carrier would be exempt until their agreement with the interLATA carrier had expired.

Even in advocating its billed party preference plan, Ameritech always has said that any of the alternatives, including carrier choice by the premises owner, would meet the requirements of the decree. Thus the premises owner choice plan described in this letter should not require a waiver or any action by the Department, and the letter has been sent for the purpose of complying with the Court's order requiring notice of changes. That order requires thirty days' notice unless the Department agrees to a shorter period. In view of the Department's efforts to end the default of public telephone calls to AT&T as soon as possible, the present proposal -- assuming that the Department has no objections to its merits -- would appear to be an appropriate instance for applying a shorter period. Accordingly, Ameritech requests the Department to advise Ameritech that it may proceed with the proposal before the thirty-day period has elapsed. Otherwise, the amendment will be put into effect after the thirtieth day.

Very truly yours,

Thomas P. Herten
/anb

cc: Luin Fitch, Esq.